

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| STATE OF OHIO, | : | APPEAL NO. C-090225 |
| | : | TRIAL NO. B-0805608(A) |
| Plaintiff-Appellee, | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| CHARLES WILLIAMS, | : | |
| Defendant-Appellant. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In two assignments or error, defendant appellant Charles Williams claims that he was improperly convicted of murder with specifications² and having a weapon while under a disability.³ We disagree and affirm.

Cederic Tate was killed with a single shotgun blast to the chest. He was found next to a 2003 Yukon Envoy that belonged to Maurice Robinson. Robinson said that he had a sporadically romantic relationship with Tate. Robinson had lent the vehicle to Tate on the day he was killed.

Tate had driven to pick up two friends: Frankie Coleman and Rhonda Wynn. While the three of them were together, Coleman and Wynn overheard Tate talking on his cellular phone about meeting a man in Bond Hill for sex. Tate dropped Wynn off, and he and Coleman returned to Coleman's home. When Tate left Coleman's home, Tate told Coleman that the man he was meeting wanted \$1000 for a "hook

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2903.02(A). Williams was found guilty of two additional counts of murder with specifications pursuant to R.C. 2903.02(B), but those counts were merged with the count that forms the basis of his murder conviction.

³ R.C. 2923.13(A)(3).

up.” Police later obtained phone records for both Tate and Williams that indicated that Tate had called Williams several times prior to the shooting.

While the police were investigating the crime scene, they were approached by Crystal Russell and Kenneth Wright. Suspicion about the pair was aroused when Russell mentioned that Tate had been killed with a shotgun—information that had not been released to the public.

Wright testified that he, Williams, and a man called Junior had been involved in a plan to rob Tate. The phone records indicated that Williams had called Wright after every call from Tate to Williams. Wright said that when Tate had arrived at the scene, Williams and Junior got into the vehicle. Their discussion turned into an argument. Williams and Junior demanded money, but Tate refused. According to Wright, Williams and Junior searched the vehicle in an attempt to find money. At some point, Tate called out that he was being robbed. It was at that point, according to Wright, that Williams shot Tate.

Wright said that the three of them had fled after the shooting. Wright went home but returned a short time later. It was then that he had met Russell.

In addition to the testimony of Wright linking Williams to the crime, as well as the phone calls between Tate and Williams, a fingerprint was found on the outside of the vehicle that belonged to Williams.

Williams’s sister, who lived nearby, testified that she had talked to her brother right after hearing the gunshot. Shortly thereafter, she went outside and saw him on his porch. She also testified that she had seen two men, whom she could not identify, fleeing from the scene on foot.

In his first assignment of error, Williams claims that the trial court improperly allowed the jury to hear and consider several hearsay statements.

The first statement was made by Tate and recounted in Wynn's testimony. She said that Tate had told her that he was looking for sex that night. The trial court ruled that the statement met an exception to the hearsay rule relating to the declarant's then-existing state of mind.⁴

Evid.R. 803(3) provides an exception to the hearsay rule for "[a] statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)* * *."⁵ This court has noted that "[s]tatements about future intent have been allowed in * * * cases * * * [where] they [a]re made under conditions of reasonable reliability [when the declarant had no motive to falsify his intentions] about a plan to do some act relevant to the issues in the case. * * * The typical situation involves an act relevant to the issues, a plan to do this act, and the person's declared intent to do it."⁶

We cannot say that the trial court abused its discretion when it determined that Tate's statement to Wynn met the requirements of Evid.R. 803(3). It was a statement of Tate's current intent to engage in sexual conduct in the future. And the statement was made under conditions of reasonable reliability. Therefore, the trial court properly admitted the statement.⁷

The second statement was made by Tate and recounted in Coleman's testimony. He said that Tate had told him that he had been speaking to a person who wanted \$1,000 for sex. The trial court concluded that this statement constituted an admissible present sense impressions.⁸

⁴ Evid.R. 803(3).

⁵ *State v. Byrd*, 1st Dist. No. C-050490, 2007-Ohio-3787, at ¶31.

⁶ *Id.*, quoting *State v. Steffen* (Dec. 11, 1985), 1st Dist. No. C-830445.

⁷ See *Byrd*, *supra*, at ¶32.

⁸ Evid.R. 803(1).

Evid.R. 803(1) provides an exception to the hearsay rule for an out-of-court statement “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.” The trial court did not abuse its discretion when determining that Tate’s statement met this exception.

The third statement was made by Junior and recounted in Wright’s testimony. Wright testified to a conversation between himself, Junior, and Williams regarding the plan to rob Tate. But Wright participated in the robbery and witnessed the murder. The “plan” did not differ from the events as they unfolded. Under these circumstances, any testimony about statements made by Junior was duplicative of other testimony by Wright that did not involve hearsay.

Finally, Williams objects to statements made by Wright and recounted in Russell’s testimony. Russell testified that Wright had told her that the “dude got shot,” that Wright had received several calls while the two watched the investigation, and that she had heard Wright say, “Yeah, they are still out there * * * they wasn’t going to find the thing, or whatever” and that “they” took the keys. The trial court determined that the statements were prior consistent statements admitted to rebut the charge of recent fabrication or improper influence.⁹

In this case, Williams has argued that Wright was testifying falsely to secure a favorable plea bargain. This argument was made to the jury, it was used during Wright’s cross-examination, and it has been argued to this court as part of Williams’s manifest-weight argument. Since Williams assailed Wright’s testimony based upon

⁹ Evid.R. 801(D)(1)(b).

the plea bargain, the state properly rebutted the charge with statements made by Wright prior to his arrest that were consistent with his testimony.¹⁰

In his second assignment of error, Williams claims that his convictions were based upon insufficient evidence and were against the manifest weight of the evidence. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.¹¹ On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.¹²

Williams's argument regarding the sufficiency and weight of the evidence has two basic components: that the jury should have believed his alibi defense, and that Wright's testimony, the major reason for his conviction, should have been disregarded. Matters as to the credibility of evidence are for the trier of fact to decide.¹³ This is particularly true regarding the evaluation of witness testimony.¹⁴ We will not reverse a conviction on the weight and sufficiency of the evidence, when the trial court has chosen one credible version of events over another.

The record contains sufficient evidence to establish that Williams had shot and killed Tate with a shotgun while committing or attempting to commit a robbery. And since Williams's disability was stipulated, the record contains sufficient evidence to establish that he had a weapon while under that disability. Further, both the murder and the weapon-under-disability convictions were not against the manifest

¹⁰ See, e.g., *State v. Fischer*, 148 Ohio App.3d 126, 2002-Ohio-3026, 772 N.E.2d 193, at ¶18.

¹¹ See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

¹² See *id.* at 387.

¹³ *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116.

¹⁴ *State v. Williams*, 1st Dist. Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶45, citing *Bryan*, *supra*, and *State v. Russ*, 1st Dist. No. C-050797, 2006-Ohio-6824, ¶23.

weight of the evidence. Therefore, we overrule Williams's second assignment of error.

Having considered and rejected Williams's two assignments of error, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 5, 2010

per order of the Court _____.
Presiding Judge